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CURRENT TOPICS

Exchanging Medical Reports

AN early and welcome sign that the new rules of court, with all their stress on a prompt definition of the issues to be tried and on the expeditious and economical disposal of those issues, are not to be construed as forcing a party to put himself at a disadvantage *vis-à-vis* his opponent seems to be afforded by *Worrall* v. *Reich* [1955] 2 W.L.R. 338; *ante*, p. 109. That decision is to the effect that the revised Ord. 30 gives no power to a master to order the exchange of medical reports where those reports, being made for the purpose of preparing the case for trial, are documents privileged from discovery. There is indeed an express saving for privileged documents in the rule which obliges the parties to produce to the master all such documents as he reasonably requires to enable him to deal properly with the summons for directions. This exception is made the specific ground for the decision. Yet we can detect in the judgments a realisation that, quite apart from the technical point of privilege, some hardship might follow compulsory disclosure of a doctor's report, even though the agreement of expert evidence may be the desirable end in view. It amounts to showing the other side in advance a proof of evidence. As MORRIS, L.J., remarked, a defendant's medical man may take a more serious view of a plaintiff's injuries than do his own doctors. In that case, if the plaintiff's report is disclosed first, the defendant might agree it and the damage awarded might be less than the medical facts warrant. A simultaneous exchange of reports would avoid this particular situation, but there can nevertheless be no compulsion on the parties to exchange. The desirability of agreeing expert evidence whenever possible remains, and was emphasised in the recent case by both members of the Court of Appeal. The observations of DENNING, L.J., in *Devine* v. *British Transport Commission* [1954] 1 W.L.R. 686; 98 SOL. J. 287, are to the same general effect.

Review of Development Plans

THE Ministry of Housing and Local Government announced on 3rd March that the Minister had issued a circular to local planning authorities giving advice on the first review of their development plans and setting out what fresh material he would like to have submitted to him on this occasion. This review is due to take place five years after the approval of each individual plan; it was one of the provisions of the Town and Country Planning Act, 1947, which aimed at making development plans less rigid than the older planning schemes. The Minister does not consider that the plans should be extended on the occasion of this review; he advises rather that authorities should take the opportunity to concentrate in detail on problems of particular difficulty in their area and on subjects which they were not able to tackle fully on the first submission of the plan. He suggests that the submission should be a fairly short and workmanlike document reviewing the plan in the light of experience over the first

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five years, and drawing on that experience. Advice is given against the making of too many minor and meticulous amendments to the approved plans. A particular problem to which the Minister has drawn attention is that of the overspill of population from one area to another and he has asked for information which will enable development plans for "exporting" and "receiving" authorities to be more closely linked.

Road Accident Insurance—An American Plan

"NUMEROUS legislatures in this country and abroad are considering measures for the solution of the social problems created by the continuously rising number of uncompensated victims of automobile accidents." "This country" is the United States of America, and the sentence is the opening one of a pamphlet of forty pages (plus another twenty of disembodied footnotes) obtainable at a price of 15s. from the Cambridge University Press as agents for the University of California Press. The author, Professor ALBERT A. EHRENZWEIG, entitles his thesis: "Full Aid Insurance for the Traffic Victim: A Voluntary Compensation Plan." What is his thesis? Simply that the situation on the roads demands more than the stereotyped remedies proposed, or in some places introduced, of compulsory liability-insurance and unsatisfied-judgment funds (this latter is represented in England by the Motor Insurers' Bureau Agreement). The need, opines the professor, is to get away from the obsession with tortious liability and from reliance upon insurance restricted to an indemnity against such liability. Tort law and tort insurance are the villains of the piece, to use his own phraseology. And his answer? Loss insurance. He would propose a law under which the owner or operator of an automobile who carries full aid insurance in statutory minimum amounts for all injuries whatsoever inflicted by his vehicle would be relieved from his common-law liability for civil negligence. In addition, a person injured by a car not so insured and not able otherwise (whether because of the absence of ordinary liability in the injurer or of his insolvency) to recover would draw the compensation from a fund administered by the motor insurers and fed partly from private "fines" imposed for criminal negligence contributing to the accident. But perhaps the most interesting part of Professor Ehrenzweig's plan is his interim suggestion that, in advance of the legislation he proposes, insurance companies should insert in their policies a full aid *clause*. Under this, a victim of the insured's car could, if he chose, request payment to himself of fixed benefits in consideration of a waiver of any claim in tort he might have. We hope our own insurance community will examine this purely contractual expedient, which appears to offer the prospect of a reduction in a type of litigation which nobody wants coupled with some compensation for innocent persons who cannot at present obtain any redress at all.

Mr. D. Rowland Thomas, Q.C.

THE death of Mr. DAVID ROWLAND THOMAS, Q.C., has removed from the scene a colourful and likeable character, who knew his own mind and was never afraid to speak it. When he retired from the bench of the London magistrates' courts last year, regular spectators at his court wrote him a letter of appreciation of his "human, humane and occasionally humorous outlook." A friend, writing in *The Times* of 3rd March, said: "He had an exceedingly warm and generous heart." That is how those who knew him well would like to remember him. Seeing him in action, one could see at once that he was, as his friend said, "scornful of the rascal and sympathetic to the hard case," and also that "his loyalties were intense and his dislikes outspoken." Called to the Bar in 1909, he had, by the time he took silk in 1931, a very busy junior practice both in London and on circuit. He was Recorder of Carmarthen from 1935 to 1941, when he became a metropolitan police magistrate, sitting at Old Street and Marylebone and eventually at Marlborough Street. Mr. PAUL BENNETT, V.C., in a tribute to him at that court, said: "In these days a character such as his is never out of place."

Costs of House Purchase

THE Secretary of The Law Society, Mr. T. G. LUND, replying to a leading article in the *Lancashire Evening Post* of Preston on 22nd February, said that it was easy to attack solicitors' scale charges for house purchase—easy because the public just do not realise what solicitors have to do for them when they are buying houses. He wrote: "Houses cannot be transferred like motor-cars or stocks and shares . . . Other people do not have rights of way over a motor-car. No questions of drainage arise. It cannot be taken over in part for road widening or be wholly acquired by the local authority, and it is not subject to schemes which may prevent it from being developed or used as the buyer wishes." After pointing out that the rates of payment were fixed by a statutory committee and submitted to Parliament, he continued: "Are bricklayers, carpenters, etc., employed in building these houses expected to do their work for less than their union rates so as to encourage house purchase by cheapening the price? Of course they are not—and why should a professional man be treated differently?"

Singing on Sunday

WE have on a previous occasion remarked on the new epigrammatic quality which has in recent months come to distinguish the headings of the law reports in *The Times*. We refer to the subject again principally to applaud two typical examples appearing at the beginning of the present month. "As sisters died in Scotland neither predeceased other" contained the pith of *Martin & Others* v. *Sinclair and Others* (5th March), and the result of *Oberst* v. *Coombs* was on the previous day expressed thus: "Police powerless to prosecute though man sang on Sunday." It is no doubt not every decision that lends its substance so readily to the art of the epitomist. Anything that makes modern case law more readable and more easily remembered is worthy of the thanks of the profession, just as, a generation ago, students were grateful to an author called Shirley, whose Leading Cases displayed a similar knack of emphasising the essential oddity of a situation without distorting its proper significance. He gave of many duller subjects accounts which his readers found as absorbing as, for example, the successful enterprise of Mrs. Carlill, or the good fortune of the chimney sweeper's boy, Armory, will always prove to the least enthusiastic of legal tyros. Perhaps the staff of *The Times* might try their hands at entitling some leading cases of the past. If they did we might expect to see "Confectioner enjoinable after more than twenty years of pounding", or "Jury need not consider whether freshman needed eleven waistcoats." But with a little practice we are sure they could improve on these examples.

PARENTAL UNDUE INFLUENCE

ALL who have had occasion to consider in any detail the law of undue influence are likely to agree with Vaisey, J., when he recently remarked: "The expression 'undue influence' is, to my mind, one of ambiguous purport" (*Bullock* v. *Lloyds Bank, Ltd.* [1954] 3 All E.R. 726, at p. 729). The present writer has elsewhere attempted to resolve some of the ambiguities of the expression ("Undue Influence and Coercion," 3 *Modern Law Review* 97–120), and in the present article it is proposed to consider the new ground which Vaisey, J., has broken in the recent case. He has stated that the expression "undue influence" "is not confined to those cases in which the influence is exerted to secure a benefit for the person exerting it, but extends also to cases in which a person of imperfect judgment is placed or places himself under the direction of one possessing not only greater experience but also such force as that which is inherent in such a relation as that between a father and his own child." In all the cases on parental influence before *Bullock* v. *Lloyds Bank, Ltd.*, it appears that the parent received some direct benefit from the child who sought to impeach a gift or transaction to the parent's advantage, but in the recent case the parent received no immediate benefit, and Vaisey, J., entirely acquitted him "of any selfish or self-seeking conduct in the matter."

The facts were that on 11th June, 1940, the settlor attained the age of twenty-one and thereupon became absolutely entitled, under the will of her deceased mother, to funds amounting to about £12,000. At that time the settlor was unmarried and living with her father. At his suggestion, and acting on the advice of his solicitor without consulting a solicitor independent of her father, the settlor settled the funds by a deed of settlement, dated 12th July, 1940, and made between herself of the one part and a bank, as trustee, of the other part. By the terms of the settlement the bank was to hold the trust fund on the statutory protective trusts for the settlor for life, and after her death (subject to any interest appointed by her to a surviving husband) on trust for her issue, and in default of issue on certain trusts for her father and brother and the brother's issue. In the event of the failure or determination of all these trusts, the fund was to be held on trust for the testamentary appointees of the settlor or for the settlor. The settlement conferred on the settlor the power to appoint the fund among her issue by will, but not by deed, and the settlor was empowered to revoke or vary all or any of the trusts contained in the settlement, but only with the consent in writing of the bank, which consent should only be given in what the bank deemed to be the best interests of the settlor, and the bank had an absolute discretion to give or withhold the consent as it thought proper without incurring any responsibility in that behalf. The settlement contained no general power of appointment to override the trusts in favour of the settlor's father and brother. She understood to a certain extent what she was doing, but she was never told that she was not obliged to make the settlement or that it was only one of many alternative arrangements which it was open to her to make. She was under the impression that the bank would look after the money for her and did not understand that the money was to be placed irrevocably beyond her own unfettered control. In 1949 she became aware of objections to the validity of the settlement, and during the following years she endeavoured to persuade the bank to consent to the revocation of the trusts and to allow her to receive the fund herself. In 1953 she commenced an action for a declaration that the deed was void. Her father had died in 1949. It was held that the settlement should be set aside.

At the time of the settlement, and for some time previously, the settlor's father had been financially embarrassed, but Vaisey, J., said that he dealt with the situation in a perfectly proper manner so far as the execution of the settlement was concerned and, as stated above, he was entirely acquitted of any selfish or self-seeking conduct in the matter. The solicitor was acquitted "of anything more than a certain measure of carelessness in the preparation of the draft," but Vaisey, J., thought that "he was handicapped by the fact that he was the father's solicitor and so," his lordship thought, "incapable of approaching the matter in a wholly dispassionate spirit." Various alternative trusts and provisions ought to have been suggested to the plaintiff and would have been suggested to her if she had been more efficiently and not only separately but quite independently advised. Vaisey, J., could not believe, for instance, that she deliberately excluded the usual power to appoint the fund to a child *inter vivos* (for example, on marriage). He felt sure that the solicitor explained to her the effect of the document and that she took in what he said so far as her intelligence and understanding allowed, but the whole thing was done much too quickly. Even if she understood what she was doing when she executed the settlement, Vaisey, J., could not believe that she was really impressed as she should have been with the fact that it was not obligatory on her to make any settlement at all: "A cut and dried scheme was put before her which was not altogether bad, although, if I may say so, rather crude."

Intervention by equity on the ground of "undue influence" does, perhaps, at first glance suggest something like a positive act on the part of the person in the ascendant, whether or not he receives a benefit from his act of influence. But the true doctrine is that there need be no positive act provided that the influence (which may be a good and proper influence in itself) does bring about the disposition. There need be no pressure or coercion. The terminology used in the reports does not always distinguish between the equitable doctrines of undue influence, on the one hand, and "pressure" or coercion on the other, although in connection with parental undue influence, as opposed to other forms of undue influence, such a distinction is consistently maintained. As Farwell, J., put it in *Powell* v. *Powell* [1900] 1 Ch. 243, at p. 246: "On the authorities it appears to me not to be a question of actual pressure, or deception, or undue advantage, or want of knowledge of the effect of the deed. The mere existence of the fiduciary relation raises the presumption, and must be rebutted by the donee." Vaisey, J., seems to have had a distinction between influence and pressure in his mind when giving judgment. He said, at p. 729 of the report: "It seems to me that the influence of the father exercised by him and through his solicitor was 'undue' in the sense that its exercise had a necessarily constraining effect on the mind of the plaintiff, who ought to have been placed in the hands of somebody who had been concerned to secure her interests and hers alone . . . The settlement was obviously one dictated by the father, not with any sinister desire of benefiting himself, but without a sufficiently single-eyed concentration on his daughter's interests, present and future, apart from the interests of anyone else in the world."

It was held that such a settlement as this could only be justified after prolonged consideration, being made by a young girl only just of age, and that it could only stand "if executed under the advice of a competent adviser capable of surveying the whole field with an absolutely independent outlook." The plaintiff "ought to have been advised carefully, deliberately, separately and independently, which she was not."

Although there was no pressure or coercion used in *Bullock* v. *Lloyds Bank, Ltd.*, there could be said to be an active exercise of parental influence in that the idea of executing a settlement came entirely from the father, who instructed his solicitor to prepare a deed. Equity has intervened in cases where there has been no active exercise of influence but, on the face of the transaction, a spontaneous act by the party. In such cases equity will intervene if the relationship of the parties raises a presumption of "undue influence." It would be more exact to say that then there is a presumption of influence which is presumed to have brought about the disposition. "Influence is a thing which is assumed as between parent and child—not that the influence is assumed to be unduly exercised, but the influence is assumed and it is then thrown upon the father, if he takes any benefit, to prove what is called the righteousness of the transaction . . . When we talk of parental authority we do not think of terror in connection with it—that is not the primary idea—it is not terror and coercion, but kindness and affection, which bias the child's mind." This is the explanation of Lord Hatherley, L.C., in *Turner* v. *Collins* (1882), 7 App. Cas. 329, at p. 339. Equity will intervene when the child's mind is presumed to be thus biased or influenced even if the parent has not in any way suggested the transaction or put the idea of it in the child's mind. In the recent case the parent did suggest the transaction, but did not receive an immediate benefit and was not self-seeking. Equity again intervened.

It is true that under the settlement the father had a remote interest in reversion (this never took effect in possession), but Vaisey, J., would apparently have decided the case the same way even if the father had not been mentioned at all in the settlement. The *ratio decidendi* seems to be that the settlor cut down her absolute interest to a protected life interest, the reversion passing to her issue. It is clear from the cases that if a gift to *A* has been procured by the actual undue influence of *B*, the donor can recover the gift. A volunteer cannot retain a benefit which he has derived from the undue influence of others. It is suggested that *Bullock* v. *Lloyds Bank, Ltd.*, is a case of actual undue influence, not a case of a mere presumption of undue influence. The father in fact procured the settlement by using his parental influence. Although undue influence is presumed in the relationship of parent and child just come of age, there was no need to rely on such a presumption in this case and there is nothing about a presumption in the judgment.

If the decision be treated as turning on a presumption of undue influence, it raises certain difficulties. After referring to the rule that a volunteer cannot retain a benefit which he has derived from the actual undue influence of another, Ashburner, in his "Principles of Equity" (2nd ed., p. 300) says: "Where a gift is set aside not because undue influence has been in fact exerted, but because the court raises the presumption of undue influence, it might have been thought that different considerations apply. The only ground for setting aside the gift being the relation of the parties, it would appear at first sight that the gift could only be set aside where it was made directly to the person as against whom the presumption arises." It has been held, however, in cases referring to the presumption of undue influence in the solicitor and client relationship, that a donor has the right of recalling his gift where it is made to the wife or child of a person against whom the presumption of undue influence arises (*Goddard* v. *Carlisle* (1821), 9 Price 169; *Barron* v. *Willis* [1900] 2 Ch. 121; *Liles* v. *Terry* [1895] 2 Q.B. 679). And there are *dicta* which suggest that a gift might be set aside where it was made to "a member of the family" of the person against whom the presumption arises (*per* Rigby, L.J., in *Barron* v. *Willis*, *supra*, at p. 135). But there seems to be no case of a gift to a third party being upset after the mere presumption of parental influence had been relied on to justify equitable intervention.

Certainly, where the transaction is in the nature of a family arrangement equity is slow to intervene. *Berdoe* v. *Dawson* (1865), 34 Beav. 603, is such a case. Romilly, M.R., said that the father "must prove not only that the son understood the transaction, but also that the benefit was not obtained from him by the undue exercise of the peculiar influence possessed by a father over his son." It was said that "it may be a very proper thing that the influence of the father should be exercised so as to induce an elder son to make a proper and permanent settlement, when he comes of age, for the benefit of the family." It would have been useful if *Bullock* v. *Lloyds Bank, Ltd.*, had considered the family arrangement line of cases and, if necessary, distinguished them. After all, the main beneficiaries of the person influenced were her husband and issue and the others also were members of her family.

W. H. D. W.

SUMMARY JURISDICTION: SOME ACTS OF 1954

THIS article will briefly review the statutes passed last year which affect the work of magistrates' courts. Consolidating Acts of 1954 now in force include the Summary Jurisdiction (Scotland) Act, the title of which adequately explains its contents, and the Pharmacy Act, relating to the registration of pharmaceutical chemists and the functions of the Pharmaceutical Society; this Act does not repeal or replace the provisions of the Pharmacy and Poisons Act, 1933, and the Pharmacy and Medicines Act, 1941, relating to the sale of poisons and medicines.

The Agriculture (Miscellaneous Provisions) Act, 1954

This Act is now in force. By s. 9 local authorities (other than county or parish councils) may collect kitchen or other waste for use as animal feeding stuffs within and outside their areas. If a person wilfully deposits in a receptacle provided by an authority under s. 9 (4) in a street or public place or otherwise used to deposit waste, anything which he knows or has reasonable cause to believe is unsuitable as an animal feeding stuff, he is liable to a fine of £5. A fine of £10 may be inflicted on first conviction of a person who removes any of the contents of a receptacle so provided when placed in a street or public place or set out for its contents to be taken away. The latter power supplements the Public Health Act, 1936, s. 76, which penalises with a fine of £5 any person who sorts over or disturbs the contents of any dustbin placed in a street or forecourt for collecting by the local authority. Proceedings under s. 9 may be taken only by the collecting authority or by or with the consent of the Director of Public Prosecutions; the Public Health Act, 1936, s. 298, places a somewhat similar limitation on proceedings under s. 76. Could a person who removed waste from a street receptacle for his own use, e.g., to feed his own chickens, be prosecuted for larceny? In *Digby* v. *Heelan* (1952), 116 J.P. News. 312, a dustman took scrap from a dustbin and sold it. The magistrate dismissed a charge of larceny, being of opinion that the case was like that of a man who took property which he believed to have

been abandoned; the High Court upheld the dismissal but said that they declined to lay down a proposition that there could not be a theft from an owner of property which was of no value to him and of which he did not intend to make any further use.

By s. 11, the Diseases of Animals Act, 1950, is applied in relation to air transport, subject to certain modifications set out in Sched. II. Section 12 amends certain provisions of the Seeds Act, 1920.

The Baking Industry (Hours of Work) Act, 1954

This Act is to come into operation not earlier than 1st January, 1957 (see s. 13 (2)). It repeals the Baking Industry (Hours of Work) Act, 1938. After providing for the hours of work at bakeries and night bakeries, the Act requires certain notices to be exhibited and gives to officers of the Ministry of Labour and National Service powers of entry and to order production of records and to examine persons believed to be bakery workers and their employers; s. 6 (2) contains a somewhat unusual provision in that an officer can require any person so examined to sign a declaration of the truth of the matters in respect of which he is so examined, though no such person can be required to give self-incriminating information. It will be an offence to refuse to give information when required to do so and other contraventions of the Act are also punishable. Officers of the Ministry can themselves conduct proceedings before magistrates but no special advantages, e.g., extended time limit, are allowed for prosecutions.

The Expiring Laws Continuance Act, 1954

This Act continues in force the speed limit in built-up areas, Pt. II of the Licensing Act, 1953 (relating to war-damaged towns), and the Furnished Houses (Rent Control) Act, 1946, among other statutes. The Prevention of Violence (Temporary Provisions) Act, 1939, which was aimed at terrorist activities attributed to the I.R.A., has not been renewed.

The Food and Drugs Amendment Act, 1954

This Act will come into force on a day to be appointed, save that s. 28 (relating to slaughterhouses) is in operation. It amends and replaces several provisions in the Food and Drugs Act, 1938, and the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950. Section 1, replacing ss. 1 and 2 of the 1938 Act, creates offences in respect of adding to, or abstracting from, or using in, foods intended for human consumption and drugs, substances the addition or removal of which will injuriously affect the food or drug. Advertising any food or drug so treated will also be an offence but it will be a defence for a person in the advertising business to prove that he received the advertisement for publication in the ordinary course of business. Section 2 sets out a defence that may be pleaded in proceedings under s. 3 of the 1938 Act (selling food or drugs not of the nature, substance or quality demanded) where a substance has been added to, or used in, or abstracted from a food or drug; the defence may be that it was not done fraudulently and that a notice drawing attention to the change was conspicuously displayed on the article. Section 2 replaces the much longer provisions to the like effect in ss. 4 and 5 of the 1938 Act, but s. 4 (4) (allowing a defence in all proceedings under s. 3 of the 1938 Act that the presence of extraneous matter was an unavoidable consequence of the process of collection or preparation) and s. 4 (6) (relating to diluted spirits) are not repealed. Regulations prescribing the composition, etc., of food may be made under s. 3 of the new Act and by s. 4 the Ministers of Food and Health may require particulars of the composition of food to be given. Such information must be kept confidential but may nevertheless be used to a limited extent in evidence in proceedings; it is doubtful if the information could be used in a normal prosecution for unsound food. By s. 5, in proceedings for an offence under s. 6 of the 1938 Act (which relates to the use of labels which are false or calculated to mislead) the fact that the label or advertisement contained an accurate statement of the composition of the food or drug shall not preclude the court from finding that an offence was committed; it is also declared that a label or advertisement which is calculated to mislead as to the nutritional or dietary value of any food is calculated to mislead, for the purposes of s. 6 of the 1938 Act, as to the quality of the food. Regulations may be made under s. 6 of the 1954 Act as to labelling, marking, advertising and description of food and the Defence (Sale of Food) Regulations, 1943, are to be repealed. Proceedings may not be instituted by a local authority under s. 6 of the 1938 Act or under regulations made under s. 5 of the 1954 Act without notice to the Minister of Food (s. 16). By s. 7, if a person is convicted of certain offences against regulations made under s. 6 (as to food hygiene), he may be disqualified by the court from using the premises affected by the charge as catering premises for not more than two years, provided that a fortnight's notice has been given of the intention to apply for the disqualification. The disqualification may be lifted after six months and, if the first request is unsuccessful, subsequent applications may be made at three-monthly intervals. Further provision is made by later sections as to registration of premises used for food preparation, etc., as to licensing vehicles and stalls used for the preparation or sale of food and as to regulations relating to milk and cream substitutes. By s. 11 (5), for the purposes of s. 9 (1) (*c*) of the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950, so far as it relates to having in possession for sale adulterated milk, a person shall be deemed to retain possession of milk deposited in any place for collection until it is actually collected; *Oliver* v. *Goodger* [1944] 2 All E.R. 481 is thus overruled in its relation to s. 9 (1) (*c*). Sections 19, 20 and 21 and Sched. I amend the law as to taking samples, and an extended time limit is provided by s. 25 for proceedings in respect of an article or substance sampled; the proceedings may be begun within two months, beginning with the day on which the sample was procured, save that the limit is still twenty-eight days in the case of a sample of milk. An extension is allowed where a magistrate certifies that in the circumstances it was not practicable to lay the information earlier but in the case of a sample of milk forty-two days is the final limit. By s. 26 the penalties for offences committed after the Act comes into operation are increased from a fine of £20 to a fine of £100 or three months' imprisonment or both, a penalty for continuing offences is laid down and provision is made as to the liability of officers of corporate bodies. The new penalties will apply to offences under the 1938 and 1950 Acts as well as under the 1954 Act. By s. 27 a defendant who shows that the contravention of which he is accused was due to the act or default of some other person in Scotland or Northern Ireland and that he (the defendant) used all due diligence to observe the law, shall be acquitted. The defendant must give notice to the prosecution, within seven days of the service of the summons, of the proposed defence, naming the person responsible, and must also give notice to the latter person, who is entitled to appear at the hearing and give evidence. By s. 34 the new Act is construed as one with the 1938 Act, which means that any defence raisable

under the earlier Act may be raised in proceedings under the new Act, e.g., under s. 83 or s. 84. The latter section is amended by Sched. III; it relates to warranties as a defence and s. 83 allows the defence that the contravention was due to the act or default of some other person.

The Industrial and Provident Societies (Amendment) Act, 1954

This Act is now in force. By s. 9 (1), if it is not proved in proceedings for misappropriation of a society's property under the Industrial and Provident Societies Act, 1893, s. 64, that the defendant acted with fraudulent intent, he shall not be convicted but may be ordered to deliver up property or to repay misapplied money, with costs. By s. 9 (2) summary proceedings for a fine under the 1893 Act may be brought by the chief or any assistant registrar at any time within one year of the first discovery of the offence by him but not more than three years after its commission.

The Juries Act, 1954

This Act is now in force and removes the limits imposed by the proviso to s. 1 (1) of the Juries Act, 1949, on the amounts payable to jurors for loss of earnings or other additional expense caused by jury service. See now the Jurors' Allowances Regulations, 1954 (S.I. 1954 No. 1627).

The Landlord and Tenant Act, 1954

Most readers of this Journal will know, to their discomfort, that this Act is in operation. Section 54 provides a procedure for determining the tenancy of premises, the tenant of which has disappeared, by application to the county court. The new procedure will, no doubt, be more convenient than that of applying to magistrates under the Distress for Rent Act, 1737 (see Halsbury, 2nd ed., vol. 20, p. 285).

The Law Reform (Limitation of Actions, &c.) Act, 1954

This Act is now in force and has repealed the Public Authorities Protection Act, 1893, s. 170 (1) of the Army Act and s. 170 (1) of the Air Force Act; the 1893 Act laid down a period of six months for a prosecution in respect of an act done in exercise of a public duty or authority and the two other provisions did the same in respect of acts done in execution of the respective statutes. One recalls an instance where the Act of 1893 was successfully pleaded by a local authority summoned in a magistrates' court for an offence for which the time limit for summary proceedings exceeded six months. This can now not happen again.

The Licensing (Seamen's Canteens) Act, 1954

This Act is in force. It allows the sale of intoxicants in seamen's canteens provided by a body approved by the Ministry of Transport and Civil Aviation, subject to the consent of the licensing justices. The grounds on which consent may be refused are limited but rules must be made to the justices' satisfaction limiting the persons who may use the canteens. Food and beverages must be on sale at the same time as intoxicants. Regulation 60AA of the Defence (General) Regulations, 1939 (authorising the sale of intoxicants in canteens), is revoked. A right of appeal against a refusal to grant, transfer or renew a licence under the Act and for certain other matters is given to quarter sessions. Various sections of the Licensing Act, 1953, relating to the conduct of the licensed premises are applied to these canteens and intoxicants may be sold there on Sundays, within the permitted hours, though they are in Wales or Monmouthshire. No liquor may be supplied for consumption off the premises.

The Mines and Quarries Act, 1954

This Act, except for two minor provisions (ss. 172 and 190) now in force, will come into operation on a day to be appointed by the Minister of Fuel and Power. It is a long Act—195 sections and five Schedules—and is concerned with management, control, safety, health and welfare in mines and quarries and the notification of accidents and the employment of women and young persons there. It is not expressed to be a consolidating Act, but it does wholly replace, with amendments, the Metalliferous Mines Regulation Acts, 1872 and 1875, the Quarry (Fencing) Act, 1887, the Quarries Act, 1894, and the Coal Mines Acts, 1911 and 1914, as well as amending other statutes relating to these subjects. The new Act will be of special concern to solicitors acting in civil proceedings against the National Coal Board. So far as summary jurisdiction is concerned, liability for contravention is imposed by s. 152 on owners and managers, subject to certain exceptions therein mentioned for managers, but s. 156 allows a defence that due diligence was shown by the defendant to secure compliance with the Act or regulations where he is charged in respect of a contravention by some other person. By s. 157, it is a defence in a prosecution to prove that it was impracticable to avoid or prevent the contravention, save where the charge is for breach of a provision which expressly provides that a person is to be guilty of an offence. Section 158 enacts a special defence for mine under-managers with limited jurisdiction. By s. 163 offences under the Act may, where no express provision is made, be tried summarily or on indictment and a magistrates' court must, if required by either party, cause a note of the evidence to be taken and preserved. Extended periods of limitation for commencing prosecutions are allowed by s. 163 (3) and (4) and by s. 163 (5) a failure to do certain things is deemed to be a continuing offence. By s. 164, no proceedings for an offence under the Act may be taken in England and Wales against an owner or manager of a mine or quarry or a person treated as such or the under manager or surveyor of a mine except by an inspector appointed under the Act or by or with the consent of the Minister of Fuel and Power or the Attorney-General.

The Pests Act, 1954

This Act is now in operation, save as mentioned below. By s. 1 the Minister of Agriculture and Fisheries may by order designate rabbit clearance areas and a person duly authorised by the occupier of land (with the Minister's consent) in such an area to kill or take rabbits pursuant to a requirement springing from such an order commits no offence under the game laws. By s. 8, a person who after 31st July, 1958, uses or permits the use of, or sells or possesses for an unlawful purpose a spring trap of a type not approved by the Minister is guilty of an offence; the Minister may by s. 8 (6) appoint an earlier date. By s. 9, it is an offence if, for the purpose of killing or taking rabbits or hares, a person uses or permits the use of a spring trap elsewhere than in a rabbit hole, save where authorised generally or specially by the Minister. By s. 12 it is an offence, punishable with a fine of £20 on first conviction, knowingly to spread myxomatosis among uninfected rabbits.

The Pool Betting Act, 1954

This Act is now in force. By s. 1, no person shall carry on any business involving the receiving or negotiating of bets made by way of pool betting unless he is registered with the county or county borough council of the area in which his principal place of business is situate; the penalty is laid

down by s. 8, applying the Betting and Lotteries Act, 1934, s. 30. If the council refuse or revoke registration, there is an appeal under s. 1 (5) to quarter sessions. Later sections lay down requirements as to the conduct of pool betting business and as to supplying information to the accountant appointed by the council and to competitors, showing the commission and expenses, stakes, etc. Section 10 legalises the sending by post of the stake money prior to the game in respect of pool betting carried on by a registered promoter; in other words, cash betting in that respect is legal as well as credit betting.

The Protection of Animals (Amendment) Act, 1954
The Protection of Animals (Anaesthetics) Act, 1954

Both Acts are in operation. By s. 1 of the Amendment Act, if a person who has been already convicted of cruelty to any animal under the Protection of Animals Act, 1911, is subsequently convicted of cruelty again, he may be disqualified for such period as the court thinks fit from having custody of any animal or any animal of a kind specified in the order. A penalty is provided for breach of an order of disqualification and there are provisions as to suspending the disqualification on appeal and removing it after lapse of time. This power is additional to that given by the Protection of Animals Act, 1911, s. 3, whereby the court may deprive an offender of ownership of an animal, and to that given by the Protection of Animals (Cruelty to Dogs) Act, 1933, s. 1, of disqualifying a person convicted of cruelty to a dog from keeping a dog or holding a dog licence (see 97 SOL. J. 855). By s. 3, the fine for an offence of cruelty to any animal under the Protection of Animals Act, 1911, s. 1, or for an offence of keeping a dog while disqualified in breach of the Act of 1933, is increased from £25 to £50.

The Protection of Animals (Anaesthetics) Act repeals the Animals (Anaesthetics) Act, 1919. If any operation is performed, with or without instruments, involving interference with the sensitive tissues or bone structure of any animal (other than a fowl or other bird, fish or reptile) without an anaesthetic, an offence of cruelty is thereby committed contrary to the Protection of Animals Act, 1911, s. 1. The Act does not, however, apply to injections or extractions by means of a hollow needle, experiments authorised under the Cruelty to Animals Act, 1876 (relating to vivisection), emergency first-aid, docking dogs' tails and amputating dogs' dew claws before their eyes are open in either case, castration of dogs, cats, horses, asses, mules, bulls, sheep, goats and pigs before certain ages, and minor operations customarily performed by a veterinary surgeon without an anaesthetic or customarily performed by any person, whether a veterinary surgeon or not.

The Protection of Birds Act, 1954

This Act is now in force. It is not expressed to be a consolidating one, but it does repeal a large number of statutory provisions relating to birds. It also draws distinctions between various types of birds, not only by protecting some out of the close season as well as in it, but also by providing a higher penalty for killing or taking specified birds. Thus, in the eyes of the law, red-necked phalaropes and Temminck's stints are more precious than capercaillies and common pochards. The Act lays down, in s. 1, restrictions on killing, injuring and taking wild birds and taking, damaging and destroying their eggs and nests in use. By s. 2, persons authorised by the owner or occupier of land or by a local authority or by a river board, fisheries committee or statutory water undertakers, may do certain things forbidden by s. 1 in respect of certain birds; the exemptions are several in number and some apply outside the close season, as defined in s. 2 (6), and some in respect of named birds only. None of the exemptions applies on Sundays or Christmas Day. By s. 3, orders may be made establishing bird sanctuaries, but persons authorised as above and the owners, lessees and occupiers of land in the area are excepted, as indicated in s. 3 (1), from their operation. By s. 4, exceptions to the prohibitions contained in s. 1 and s. 3 are made for acts done pursuant to the Agriculture Act, 1947, s. 98 (infested land), or to the Diseases of Animals Act, 1950, for ringing birds, for experiments authorised under the Cruelty to Animals Act, 1876 (vivisection), for acts done to prevent serious damage to crops, vegetables, fruit, growing timber or any other form of property, or to fisheries, acts of mercy or acts which are "the incidental result of a lawful operation and could not reasonably have been avoided." By s. 5, save under a licence granted under s. 10, certain forms of trap, traps baited with forbidden substances, the use of live birds to take other birds, the use of artificial light, the use of shot-guns of which the barrel's internal diameter at the muzzle exceeds $1\frac{3}{4}$ inches, and the use of motor vehicles, motor boats and aircraft to pursue wild birds are forbidden, with limited exceptions for authorised persons, nets in duck decoys in use immediately before 4th June, 1954, and ringing and vivisection. Section 6 restricts, save under a licence granted under s. 10, the sale or possession for sale of certain birds, eggs, dead birds, other than ones lawfully killed or lawfully imported or of certain species, and their skins and plumage, with exceptions for eggs of gulls, eggs of wild ducks, geese or swans for hatching and eggs of lapwings before 15th April. "Sale" includes offering for sale, barter and exchange. By s. 7, the importation of certain wild birds, in most cases when dead, and lapwings' eggs is forbidden save under licence. Section 8 relates to cages; they must permit the bird to spread its wings freely, but there are exceptions for poultry and birds at shows or under conveyance or treatment. It is an offence by s. 8 (2) to organise or take part in an event at which captive birds are liberated for the purpose of being shot. By s. 12, the police are given certain powers of search and arrest and the courts are given powers of forfeiture; venue for proceedings can be where the offender is found or first brought where the offence was committed outside the area of any commission of the peace.

Orders made under the repealed Acts are not apparently kept in force by the new Act, save those establishing what may be termed bird sanctuaries (see s. 3 (3)).

The Rights of Entry (Gas and Electricity Boards) Act, 1954

This Act is in force. In *Grove* v. *Eastern Gas Board* [1951] 2 All E.R. 1051; 95 SOL. J. 789, it was held that officials of a gas board had a statutory right of forcible entry on private premises to collect money from the meter. The Act curtails this right for gas and electricity board officials to occasions of emergency, as defined in s. 3 (3), or where consent has been given by or on behalf of the occupier, or where a warrant from a magistrate has been obtained under s. 2.

The Slaughterhouses Act, 1954

This Act is in force and its long title sufficiently sets out its purposes:

> "An Act to make local authorities responsible for the time being for securing that adequate slaughterhouse facilities are available locally; to explain and amend the law with respect to the provision by local authorities of public slaughterhouses, the making of charges in respect

of such slaughterhouses and the grant and renewal of licences under s. 57 of the Food and Drugs Act, 1938; to make further provision with respect to the regulation and restriction of private slaughterhouses and the payment of compensation where a licence or registration in respect of such a slaughterhouse is refused or ceases to be in force . "

The right of appeal to a magistrates' court against the grant or refusal of a slaughterhouse licence by a local authority, given by the Food and Drugs Act, 1938, s. 57 (6), remains. The Food and Drugs Amendment Act, 1954, s. 28, also makes provision as to private slaughterhouses; that section is in force. See also the next paragraph.

The Slaughter of Animals (Amendment) Act, 1954

This Act is in force and amends the law relating to this subject; it repeals several enactments wholly or in part, including the Slaughter of Animals (Amendment) Act, 1951, *in toto*, and parts of the Protection of Animals Act, 1911, the Slaughter of Animals Act, 1933, and the Slaughter of Animals (Pigs) Act, 1953. Section 1 supplements the Slaughterhouses Act, 1954, *supra*, by making further provision as to licensing premises for the slaughter of animals. Section 2 confers a power to make regulations for securing humane conditions and practices in killing animals at slaughterhouses and knackers' yards. By s. 3, further provision is made as to licensing slaughtermen under the Slaughter of Animals Act, 1933, s. 3; the right of appeal to a magistrates' court, under s. 3 (6) of the 1933 Act, against a suspension or revocation of, or refusal to grant or renew such a licence remains. By s. 4, it is provided in effect that all animals slaughtered in a slaughterhouse or knackers' yard must be killed by a method causing instantaneous death or stunning; previously the requirement to that effect in the Slaughter of Animals Act, 1933, s. 1, applied only to certain animals. Proviso (*a*) of s. 1 (1) of the 1933 Act, allowing other methods of killing pigs in premises where electrical energy is not available, ceases to have effect; the Slaughter of Animals (Pigs) Act, 1953, had already cut down the effect of this proviso considerably. Section 5 of the new Act increases the penalties for breach of the statutes relating to humane slaughtering and allows the court to cancel a slaughterhouse licence on conviction for any such offences. By s. 5 (2) it is a defence that the breach was necessary by reason of an accident or other emergency to prevent injury or suffering to any person or animal. See also the Slaughter of Animals (Prevention of Cruelty) (No. 2) Regulations, 1954 (S.I. 1954 No. 1584).

The Town and Country Planning Act, 1954

Most readers of this Journal will know of this Act only too well and attention is drawn solely to s. 58. This relates to cases where monopoly value was payable on the grant of an on-licence for the sale of intoxicating liquor after 1st July, 1948, but before 18th November, 1952; in such cases Pt. I of the Act, relating to special payments for depreciation of land values, may apply.

The Transport Charges, &c. (Miscellaneous Provisions) Act, 1954

This Act is in force and it relates mainly to transport charges; it will affect solicitors who appear before the licensing authorities for public service vehicles. By s. 9, the Minister of Transport and Civil Aviation may make regulations with respect to public service vehicles, tramcars and trolley vehicles for determining the number of seated and standing passengers that may be carried and the marks to show such numbers. The Public Service Vehicles and Trolley Vehicles (Carrying Capacity) Regulations, 1954 (S.I. 1954 No. 1612), have been made under s. 9 accordingly; they do not apply to tramcars. A motion in the House of Commons to annul these regulations was unsuccessful (Hansard, 1st February, 1955).

No Bill relating to lotteries passed into law during 1954.

G. S. W.

A Conveyancer's Diary

BOUNDARIES—I

It is one of the disadvantages of our system of jurisprudence that the smallest, and therefore the commonest, problems are often the most difficult to solve. Law made by judges is law made at the expense of the litigant, and even the most extreme exponents of the virtues of private enterprise usually prefer solving their own small disputes to adding another brick to the structure of the law, in all those many cases, at least, where victory in the courts does not bring the *solatium* of an immediate money award to compensate for the time and trouble spent in litigation. Reported decisions on such matters as stamp duties and boundary disputes, to take these as examples, are thus regrettably (from the lawyer's point of view) few. Another disadvantage of the system is that when a case is reported it is difficult to extract from the mass of fact which is relevant only to the particular dispute under consideration (but, of course, necessarily reported because vital to that dispute) the relatively small element of principle which can serve as a guide in other similar, but not identical, cases.

The recent decision of the Court of Appeal in *Hopgood* v. *Brown* [1955] 1 W.L.R. 213 (also reported shortly at p. 168, *ante*) is the immediate occasion of these general observations. It is a decision on a boundary dispute, a type of dispute which every conveyancer will allow to be very common, but one which rarely reaches the books: the last reported case of any importance on the subject is now over fifteen years old. And although this decision will doubtless provide the starting point for any consideration of the law on disputes of this kind to anyone confronted with a similar problem in the future, and general comment on the case may therefore seem unnecessary, some comment on the points decided over and above the necessarily short summary in the headnotes to the reports may be useful. That is the object of this article.

The dispute concerned the boundary between two plots of land which originally formed part of a building estate. The two plots were originally conveyed, as such, in 1932, when they were described in the following manner. The northern plot (which eventually came into the ownership of the plaintiff) was described as having a frontage on the west to a proposed road to be known as Hamlet Road of 40 feet or thereabouts, a length along its northern side of 173 feet or thereabouts, and a width at its rear or east side of 30 feet or thereabouts. There was no mention in this description of the southern boundary, nor of the area of the plot, but the plot was described, " for the purpose of facilitating identification only," as delineated and shown by the pink colour on the plan drawn on the 1932 conveyance. The southern plot (which eventually came into the ownership of the defendant) was described, in a similar fashion, as having a frontage on the west to the proposed new road of 40 feet or thereabouts, a

length along its south side of 170 feet or thereabouts, and a width at its rear or east side of 31 feet or thereabouts. As in the case of the description of the northern plot, this description contained no mention of the northern boundary of this plot (i.e., the vital boundary between the two plots), nor of the area of the plot, and there was the same reference, in precisely the same terms as in the description of the northern plot, to a plan drawn on the original (1932) conveyance of the plot "for the purpose of facilitating identification only." (In giving these descriptions of the two plots here I have simplified the references to the compass points; in actual fact, the frontages to the road faced north-west, not west, and so on.)

After divers mesne assignments, as a recital would put it, the northern plot was, in 1952, sold as a vacant plot by its then owner to the plaintiff, and in the conveyance which completed this sale the plot was described in exactly the same terms as the terms in which it had been described in the original (1932) conveyance, the reference to the plan in this conveyance being a reference to the plan drawn on the original conveyance. The plaintiff did not check the dimensions of his purchase until a bungalow which he erected thereon had been completed, when he found that there was insufficient space between the side of the bungalow and a garage, on what appeared to be the boundary of the northern plot, for the passage of a car. The position of the garage on the northern plot was then for the first time examined on behalf of the plaintiff, and it was discovered that the northern wall of this garage had been built not along the course taken by a straight line drawn from the point where the frontages of the two plots to Hamlet Road joined backwards to the point where the rear widths of the two plots of 30 feet and 31 feet respectively joined, but along a course at an angle to such a line cutting in to the northern plot. The plaintiff treated the building of this garage by the defendant on the southern plot as an encroachment on the northern plot, and commenced proceedings for trespass. (These would more properly, the Master of the Rolls suggested, have been laid in ejectment, but nothing turned on this.) The first question to determine, therefore, was this: what had the plaintiff obtained by the conveyance of the northern plot to him in 1952?

There were two possibilities to consider. Either the property conveyed by the 1952 conveyance was the northern plot as described in the original conveyance of 1932, or it was the property as it stood in 1952. On the former footing, the southern boundary had been left in the air, but the county court judge who tried the action and the Court of Appeal were unanimous in holding that, in the case at any rate of plots shown on a plan as part of a building estate, the boundaries in the absence of an express indication to the contrary must be taken to be uniform and regular. As all the other boundary lines of the two plots were straight lines, this indicated that the undemarcated boundary was also a straight line. But if it were legitimate for the purpose of assisting the description of the northern plot in the 1952 conveyance to look at the physical circumstances at the time when it was executed, then an inspection of the premises would have shown, in this case, first, that the northern wall of the garage built by the defendant on the southern plot was out of the true with a straight boundary drawn between the plots so as to give the defined widths at the western and eastern ends of each plot, and secondly, that a post and wire fence had been erected between the two plots running from the eastern end of this garage to the back boundaries of the two plots.

On the question whether it was legitimate to take into account the physical state of the two plots at the time of the plaintiff's purchase in 1952, there was a division of opinion. The Master of the Rolls said that he was much impressed by the argument that it was legitimate to take this matter into consideration. "A conveyance purports, on the face of it, to be a conveyance of something real, of part of the surface of the earth and that which underlies it. It is, therefore, as I understand it, legitimate to look at the physical facts, not for the purpose of distorting the language of the deed, but for the better identification of that which the language describes." He then went on to consider the language of the description used, and said that if the description had ended with the dimensions of the plot, so far as those were given, he would have thought it would have been plain that "the thing intended to be described was to be identified as that which on the surface of the earth was, *inter alia*, indicated and marked by the northern wall of the garage and the post and wire fence." But the parcels did not end there; they proceeded to refer to the plan on the 1932 conveyance, and that was an indication that the subject of the 1952 conveyance was the same as that of the 1932 conveyance. But despite this contra-indication, I think that the Master of the Rolls might well, if left to himself, have held that, in the circumstances, the description used in the 1952 conveyance was apt to describe the plot as it had been altered by the building of the garage by the defendant and the erection by him, in prolongation of the physical demarcation constituted by the garage, of the post and wire fence.

But the other two members of the Court of Appeal (Jenkins and Morris, L.JJ.), who on this point took exactly the same view of the case as had been taken by the county court judge, held that as every conveyance of the northern plot subsequent to the original conveyance of 1932 had used the same description of this property and had contained a reference to the same plan, what was conveyed by the 1952 conveyance was precisely the same as what had been conveyed by the 1932 conveyance. In their view the meaning of the language of the 1952 conveyance could not be affected by the fact that, before the conveyance of the northern plot to the plaintiff in 1952, the defendant had allegedly encroached on that plot.

It will be seen that this part of the decision turned on the incorporation by reference in the 1952 conveyance of a plan which did not then conform to the physical disposition of the two plots. As it turned out, this did not in the end affect the result; but it might have done, and I will revert to this matter of old plans next week, when I will also deal with the estoppel on which this case was actually decided.

"A B C"

The Halifax Building Society announces revised rates of interest on mortgages as follows: (*a*) New occupier borrower (private dwelling-house) rate 4½ per cent.; other mortgages 5 per cent. (*b*) Existing occupier borrower (private dwelling-house) mortgages at rates less than 4½ per cent. to be increased to 4½ per cent. from 1st October, 1955.

The President of The Law Society, Mr. F. Hubert Jessop, gave a luncheon party on 28th February in his suite at No. 60 Carey Street. The guests were: The Lord Chancellor, the United States Ambassador, Sir Edward Bridges, Sir Jeremy Raisman, Mr. D. V. House, Mr. W. Charles Norton, and Mr. Thomas G. Lund.

Landlord and Tenant Notebook

BUSINESS PREMISES: AMICABLE SETTLEMENT OF COMPENSATION

WHEN it was decided, in *Rose* v. *Hurst* [1949] 2 K.B. 272 (C.A.), that a tenant of combined premises—residential and business—who had qualified for the grant of a new lease under the Landlord and Tenant Act, 1927, s. 5, then in force, might be granted one at a rent exceeding the amount permitted by the Rent Acts, the decision may be said to have pleased a number of tenants as well as a number of landlords. For there were, and are, business tenants who would prefer an estate in land to a status of irremoveability. But, when it came to achieving the desired position by negotiation only, difficulties presented themselves. For what the Court of Appeal had laid down might be taken to be no more than this: a Landlord and Tenant Act, 1927, Pt. I, tribunal is not obliged, when determining reasonable rent, to consider the circumstance that the premises are also let as a dwelling-house and are within the Rent Acts. So, while under that Act a claim for compensation for goodwill, and consequently a claim for a new lease, could be disposed of by the landlord offering and the tenant accepting a proposal made under s. 4 (1) (*b*), it was not safe to advise a landlord to adopt that method even if the tenant for the time being were willing to co-operate. If the tenant did not, some successor in title might later on assert rent restriction rights. So the only thing to do was to suggest a sham fight, as it were, in order to obtain the immunity conferred by an order of the tribunal under the Act.

Combined premises are excluded altogether from the scope of Pt. II of the Landlord and Tenant Act, 1954, which has superseded the provisions of ss. 4 and 5 of the Landlord and Tenant Act, 1927; the new measure has been said to have brought about a state of affairs in which the habendum of a lease of purely business premises is something not to be taken seriously; and that it is contemplated that the grant will go on till one of the parties finds that it will pay him to terminate it. The Act does, however, provide for renewal by agreement (s. 28), and for agreement as to rent and terms where there is to be a new grant (ss. 34, 35); but, as did the Landlord and Tenant Act, 1927, it enables a landlord to defeat a claim for renewal in certain circumstances, such as intention to demolish, etc. (s. 30), in some of which—those in subs. (1) (*e*), (*f*) and (*g*)—the tenant has a claim for compensation under s. 37. It is not necessary to discuss the circumstances in question in this article; they are concerned with letting as part of a larger unit, intended demolition or reconstruction, intention to occupy for business of the landlord's own. The compensation itself is measured by reference to length of expired agreement and to rateable value.

Now it can happen that a tenant can see no way of successfully supporting a claim for a new tenancy or of answering his landlord's objections, the reason being one to be found in the above-mentioned paras. (*e*), (*f*) and (*g*). It follows not only that he is entitled to compensation, but also that the assessment of the sum payable is substantially a matter of arithmetic. Must the parties stage a sham fight as in the case suggested in my opening paragraph?

By s. 38 "(1) Any agreement relating to a tenancy to which this Part of this Act applies (whether contained in the instrument creating the tenancy or not) shall be void in so far as it purports to preclude the tenant from making an application or request under this Part of this Act or provides for the termination or the surrender of the tenancy in the event of his making such an application or request or for the imposition of any penalty or disability on the tenant in that event. (2) Where (*a*) during the whole of the five years immediately preceding the date on which the tenant . . . is to quit the holding, premises . . . have been occupied for the purposes of a business . . . and (*b*) if during those five years there was a change in the occupier of the premises, the person who was the occupier immediately after the change was the successor to the business carried on by the person who was the occupier immediately before the change, any agreement (whether contained in the instrument creating the tenancy or not and whether made before or after the termination of that tenancy) which purports to exclude or reduce compensation under the last foregoing section shall to that extent be void, so however that this subsection shall not affect any agreement as to the amount of any such compensation which is made after the right to compensation has accrued. (3) In a case not falling within the last foregoing subsection the right to compensation conferred by the last foregoing section may be excluded or modified by agreement."

What does all this mean? When read for the first time, the section certainly appears somewhat confusing; and I suggest that one way of approaching the question what it really effects is that of taking the different subjects with which it deals in turn. For there are three different subjects: the right to security of tenure; the right to compensation; and the amount of compensation.

Thus—whether this be the best possible arrangement or not—the section does begin by avoiding any agreement which would prevent a tenant from making an application or request for a new tenancy. A request is made by a tenant holding under a tenancy granted for a term of years exceeding one year (s. 26); such tenants can take the initiative. An application is the proceeding by which a court is called upon to decide the question whether the tenant is entitled to a new tenancy, and, if so, what its terms are to be; and this step follows the request when a request has been made and the landlord has notified the tenant that he will oppose any such application. When the tenancy was for not more than a year, there is no provision for a request, and the application is made in consequence of the tenant's intimation, on receiving the landlord's notice, that he is not willing to give up possession (s. 29). It might be said that subs. (1) of s. 38 of 2 & 3 Eliz. 2 c. 56 (the Landlord and Tenant Act, 1954) harmonises admirably with c. 29 of 25 Edw. 1 ("Magna Carta"): "We will not deny . . . to any man either justice or right."

"Either justice or right" (*rectum vel justiciam*): it might be more accurate to say that the subsection concerns "justice" in the sense of legal remedies, while the other two subsections deal with legal rights and their modification.

Subsection (2) may be said to recognise a right to exclude or reduce compensation, *and* a right to agree the amount of compensation, when no right to a new tenancy is established. These are different things. It should be borne in mind, when considering the right to compensation, that it is only in a limited number of cases that it can come into being at all, and those cases depend upon contingencies not easily foreseen when a tenancy agreement is entered into. This no doubt

underlies the apparently arbitrary division of tenancies into those of premises which have been occupied for business for five years and those which have not. What appears to have been visualised is the case of an owner of, say, a shop which he intends to, but is not ready to, occupy himself, or to reconstruct; in the meantime he may as well make some money by letting it; he is to be permitted to say to any prospective tenant that he will oppose any application for a new tenancy, and that the tenant is not to have any compensation for loss of tenure, or not to have as much as the Act would otherwise give him. This (if, for the sake of convenience, I may skip for a moment the third subject) makes subs. (3) essentially declaratory: parties to such temporary arrangements may, in spite of what s. 37 says, exclude or modify the right to compensation.

Lastly, there is this question of settling the amount by amicable agreement. Sanction is given to any agreement of that nature made after the right has accrued, and that is on the tenant quitting the holding (s. 37 (1)). Is this "so however that this subsection shall not affect any agreement as to the amount of any such compensation which is made after, etc." limited to cases falling within the "Where during the five . . . years immediately preceding, etc."? I would submit that it is not. The provision might have been given more prominence, but it concerns "any agreement as to the amount of *such* compensation," and the "such" is "compensation under the last foregoing subsection," whether occupation has been for five years or not. The conclusion suggested, then, is that once the tenant has quitted the premises, he and the landlord can safely discuss what compensation is to be paid; there may be an argument about whether the premises were occupied for as long as fourteen years for the purposes of a business carried on by the occupier, or whether on change of occupier the newcomer succeeded to a business carried on by the outgoer (s. 37 (3) (*a*) and (*b*)); but the parties can settle such questions themselves, and the landlord accept a receipt for payment of the amount arrived at as a valid discharge of his liability.

R. B.

HERE AND THERE

STILL LIFE

ALTHOUGH the French invented Impressionism in painting, their codified law is much more akin to a line drawing than anything else. English law, by contrast, is essentially Impressionistic, for its makers and interpreters, the judges, abhor the black line which would divide colour from colour. In our legal masterpieces colour merges into colour, so that generally in advising a client, petulantly demanding to know his *precise* legal rights, it is hard to tell where scattered trees end and wood begins. It is the case just as surely in the representation of still life as in those broad landscapes where cows or children move unpredictably out of fields or enclosures into highways and streets and cabbage plots and railway embankments. A most masterly still life was recently exhibited in the court of the Lord Chief Justice, a composition of sandwiches, sausages and full and empty glasses. The work was what used to be called a "problem picture" and the problem for the judicial critics to solve was whether in relation to the contents of the glasses the sausages and the sandwiches constituted a "meal." And that, of course, raised a host of ancillary problems, for no Government has hitherto been so rash as to establish a "statutory meal." There are problems gastronomic, problems of cubic capacity, problems of social expediency, problems of duration. Thus we know (or we were insistently told in our formative and impressionable years) that "enough is as good as a feast," but is it identical with a feast or even a modest repast or is it only a parallel conception on a different plane of thought and experience? We have the classical authority of Stephen Leacock for the proposition that "no number of boarding house meals are ever equal to one square meal," from which it is to be deduced that an amount falling short of "enough" may yet be classed as a "meal." Is a meal purely a matter of subjective intention like the notional meal of Cyrano de Bergerac when, so as not to hurt the feelings of the refreshment girl at the theatre, he accepted just half a macaroon and a grape with a glass of water? The school of thought (also influential in our upbringing) that one should always rise from table with a slight appetite would be unlikely to exclude that menu from the category of "meal."

THE PROBLEM

THE facts giving rise to this particular problem were that the proprietor of licensed premises had been granted a supper hour extension certificate under s. 104 of the Licensing Act, 1953, increasing permitted hours from 10.30 p.m. to 11.30 p.m. At 10.30 orders for sandwiches and sausages were taken and executed. Customers were supplied with drinks at or soon after the time the food was bought. Later more drinks were served but not more food. Hence the question of the adequacy of the "meal," alike in content and duration. The Lord Chief Justice said that it was a pure question of fact. A sandwich, he observed, could be a meal and, looking back to his circuit days, he recalled how he used sometimes to make a meal of railway sandwiches. "They were very nasty," he added, not, on this occasion, happily reminiscent. As to the question of duration, his lordship again took his stand on the strong rock of personal experience, saying that if he took a glass of port (or even two) after his dinner, he was still at dinner. This counsel for the prosecution did not venture to controvert, wisely, since in all matters relating to the uses of port the Lord Chief Justice is an unappealable authority. In this case some fifty minutes had elapsed between the last food and the last drink and to the prosecution it had seemed that so long a lingering over so small a gastronomic pleasure as a sandwich bore a certain air of unreality about it: but the court held that, borderline case as it was, the justices had had enough evidence to hold that it fell on the lawful side of the border.

STILL HUNGRY?

THE English have made a marked recovery from the humbly grateful mood of resignation with which they accepted any scrap of moderately edible protein that the Men in the Ministry happened to let through to the shops or restaurants and the shopkeepers or restaurateurs condescendingly passed on to their petitioning clients. One no longer has to cross to Ireland or the Continent to discover what a meal looks and tastes like. But the notion that a sandwich can qualify even as an honorary meal belongs essentially to our own time. In the past, of course, there were enormous numbers of people who subsisted on a nibble here and a bite there, but no one imagined that they were anything but very, very unfortunate. It happened the other day that I came across a fine example of the early Victorian lawyer's idea of a meal, a meal for a very special occasion it is true, but, reduce it in scale as you will to imagine the day-to-day routine eating of a member of the Bar in 1845, it is still overwhelmingly impressive. This was the first service on the occasion of the opening of the new Lincoln's Inn Hall by Queen Victoria: Le Saumon de

Severn; les Ris du Veau piqués à la Toulouse; Le Salmi au Vin de Bordeaux; La Tortue liée; la Tortue claire; les Cailles à la Jardinière; les Cotelettes de Mouton à la Macédonie; le St. Pierre Sauce Hollandaise; les Boudins de Levraut à la Périgord; le Turban de Lapéreaux à la Financière; le Suprême de Vôlailles conté aux Truffes; la Casserole de Ris à la nesle à l'Allemande; les Rougets à l'Italienne; le Turbot aux Homards; les Cotelettes d'Agneaux aux Concombres; les Filets de Canetons à la Bigarrade; les Filets de Poulet sautès aux petits pois; les Filets de Pigeon à la St. Ménéhould; la Pâté Chaud de Mouton à l'Italienne; les Boudins de Poulets à la Royale; les Filets de Poulet Sauté Sauce Bohémienne; les Ris de Veau piqués aux petits pois; la Chartreuse de légumes en surprise; les Tendrons de Veau à la Villeroi. After that there was the second service. It is reassuring to hear that the Queen "showed a real appreciation of the good cheer which was placed before her." We've travelled some way on now, both linguistically and gastronomically. Not long ago I saw on a menu "Kipper sur Toast."

RICHARD ROE.

NOTES OF CASES

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COURT OF APPEAL

RENT RESTRICTION: PERMITTED INCREASE: RATES

Westminster and Kensington Freeholds, Ltd. *v.* Holme

Singleton and Romer, L.JJ. 7th February, 1955

Interlocutory appeal from an order of Glyn-Jones, J.

The plaintiffs were the owners of a flat of which the defendant was the tenant. The landlords brought an action against the tenant to recover a sum of £114 12s. 2d., made up of various items, including a sum, expressed to be in respect of excess rates, amounting to £8 15s. 6d. The rent of the flat when the tenancy began in 1928 was £265 a year and it was common ground that, by reason of their rateable value, the premises came within the terms of the Rent Acts. The lease was for a term of fourteen years from 25th March, 1928, and on its expiration in 1942 the tenant remained on the premises as a statutory tenant. By cl. 5 of the lease, the landlords covenanted with the tenant: "That the lessors will during the continuance of the term pay all the rates, taxes and assessments charged or to be charged on the premises." The lease expired on 25th March, 1942, and up to that time the landlords paid all the rates in accordance with their covenant. They were not in a position, by reason of the terms of their covenant, to increase the defendant's rent down to the expiration of the lease in respect of increases of rates which had been made between September, 1939, and March, 1942, but they contended that they were entitled to recover the increases at the end of the contractual tenancy by virtue of s. 2 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The tenant relied on the provisions of s. 2 (3) and s. 15 (1) of the Act. The landlords applied for leave under R.S.C., Ord. 14, to sign judgment for the whole sum of £114 12s. 2d. claimed by them, and an order to that effect was made by Master Clayton and affirmed on appeal by Glyn-Jones, J. The tenant appealed.

SINGLETON, L.J., said that the question which arose was what was the true position as to rates after the expiration of the lease. The landlords relied on s. 2 (1) (*b*) of the Act of 1920, which allowed a landlord to make an increase of rent against a tenant where there had been an increase in the amount payable by a landlord in respect of rates over the amount payable in respect of the yearly, half-yearly or other period which included 1st September, 1939. The tenant relied on the last words of para. (*b*), which provided that in the case of a dwelling-house for which no rates were payable in respect of any period including 1st September, 1939, the period to be considered was the date on which the rates first became payable thereafter. It was submitted for the tenant that the house ought to be regarded as a dwelling-house for which no rates were payable during any period which included the prescribed date since she was not paying rates up to the end of the lease by reason of the landlords' covenant therein. She therefore claimed that she was not liable to pay increases in rates made between 1st September, 1939, and the end of the lease. He (Singleton, L.J.) did not think that that submission was sound. The words of the latter part of para. (*b*) were not "a dwelling-house for which no rates are payable by the tenant," but covered the case of a dwelling-house for which no rates were payable at the material time. That meant payable by anyone. It was agreed that the landlords were entitled to recover against the tenant increases of rates made after the expiration of the contractual tenancy on 25th March, 1942, but it was said for the tenant that the amount of the increase before the conclusion of the contractual tenancy could not be recovered even in respect of a period after the contractual tenancy had ended. In his opinion, on the strict wording of s. 2 (1) (*b*), the contention for the landlords was right and they were entitled to recover the amount of the increase in respect of each period after the contractual tenancy came to an end. Section 15 of the Act, which gave the statutory tenant the benefit of all the terms and conditions of the original contract of tenancy, which would include the covenant by the landlords to pay the rates, did not help the tenant since it only applied so far as it was consistent with the provisions of the Act, one of which was that under s. 2 (1) (*b*) a landlord was entitled to recover additional rates over and above those which were payable on 1st September, 1939. In his view the appeal should be dismissed.

ROMER, L.J., delivered an assenting judgment. Appeal dismissed.

APPEARANCES: *W. J. Williams* (*Greenwood, Milne & Lyall*); *J. Miskin* (*Pierron & Morley*).

[Reported by PHILIP B DURNFORD, Esq., Barrister-at Law] **[1 W.L.R. 272**

COLLISION WITH STATIONARY VEHICLE: WHETHER NEGLIGENCE: LEGALITY OF PARKING

Randall *v.* Tarrant

Evershed, M.R., Jenkins and Morris, L.JJ. 4th February, 1955

Appeal from Windsor County Court.

The defendant drove a tractor, which was towing a baler, along a public highway in daylight and collided with a stationary car belonging to the plaintiff. The car had been parked close to the near side hedge and the plaintiff and his son had gone into a field belonging to the defendant at the side of the road, leaving two people in the car. The clearance between the baler at its widest point and the car was only about six to nine inches. The defendant's servant was sitting on the baler and he shouted to his master that he thought there was sufficient room to pass but did not dismount to confirm his belief and the defendant drove on, merely slackening speed to about two miles an hour, and in attempting to pass collided with the car. The plaintiff brought an action against the defendant alleging negligence and claiming damages. At the hearing in the county court there was a conflict of evidence as to the whereabouts of the plaintiff and his son at the time of the accident. The judge preferred the evidence given by the defendant that at the material time the plaintiff and his son were trespassers in the hayfield at the side of the lane and did not see the accident. He held that the defendant was not guilty of negligence and dismissed the action. He held that if the plaintiff had been entitled to succeed the damages, including special damage, should be assessed at £21 1s. 6d. The plaintiff appealed.

EVERSHED, M.R., said that a driver on a highway who sees a stationary vehicle has to take all possible care to avoid a collision. If there is insufficient room to pass he is negligent if he attempts to do so. If, however, there is enough room but a collision occurs, then *prima facie* he is again negligent, the onus being on him to show that he has taken all the steps which a reasonable man would take in the circumstances, that is, all possible care to avoid a collision. Here there was room to pass, but on the evidence his lordship was unable to find that the defendant was taking all the care which he should have done, and he was, accordingly, negligent. It had been suggested that as at the time of the accident the plaintiff was trespassing, the

car parked on the highway was equally trespassing; that it was no longer a legitimate use of the highway to park the car and then to trespass into the defendant's fields, and that, accordingly, the standard of care owed by the defendant was limited to that expressed by Lord Hailsham in *Robert Addie & Sons' Collieries, Ltd.* v. *Dumbreck* [1929] A.C. 358, at p. 365. On the facts, however, the parking of the car was not so intimately bound up with an act of trespass on the defendant's field as to make the car itself either the symbol of a trespass or the instrument of a nuisance. Reference was also made to *Foster* v. *Bush House, Ltd.* (1952), 96 SOL. J. 763.

JENKINS and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *John Stocker* (*John Holt*); *Geoffrey Lane* (*Horwood & James*, Aylesbury).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 255**

LANDLORD AND TENANT ACT, 1954: NOTICE TO QUIT SERVED BEFORE COMMENCEMENT OF ACT: NOTICE NOT IN FORM PRESCRIBED IN REGULATIONS IN FORCE BEFORE COMMENCEMENT OF ACT INVALID

Orman Brothers, Ltd. *v.* Greenbaum

Lord Goddard, C.J., Singleton and Romer, L.JJ.

17th February, 1955

Appeal from Devlin, J. ([1954] 1 W.L.R. 1520; 98 SOL. J. 887).

By s. 24 (1) of the Landlord and Tenant Act, 1954: "A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Act"; and by subs. (3) of that section: "Notwithstanding anything in subs. (1) of this section . . . (*b*) where, at any time when a tenancy is not one to which this Part of this Act applies, the landlord gives notice to quit, the operation of the notice shall not be affected by reason that the tenancy becomes one to which this Part of this Act applies after the giving of the notice." The Act received the Royal Assent on 30th July and came into force on 1st October; but regulations prescribing forms of notices for the purposes of the Act were brought into operation on 27th August, in the exercise of powers to make and bring into operation such regulations "at any time after the passing and before the commencement of" the Act. Three days later, on 31st August, landlords gave notice to quit, expiring on 4th October, to a tenant of business premises to which the Act applied. The notice was not in the form prescribed by the regulations. Devlin, J., held that the notice to quit was ineffective because it was not in the prescribed form. The landlords appealed.

LORD GODDARD, C.J., said that the court was here considering a notice to quit which had been given three days after the regulations had come into force, and which became effective three days after the Act came into operation. Bearing that in mind, it was unarguable that the landlord had not to use the statutory form, because the provisions of the Act were that the Lord Chancellor could by regulation prescribe the date on which a particular form was to become effective. The regulation came into force on 27th August. Then s. 24 provided that the tenancy did not come to an end unless it had been terminated in the way laid down in the Act, and that was by giving the notice in the form prescribed by the regulations. On the further submission that the position for the landlord was nevertheless saved by s. 24 (3), his lordship agreed with Devlin, J., who thought that the subsection clearly meant that if the tenancy was, say, of a private house, to which Pt. II of the Act of 1954 did not apply, notice to quit the house would remain good although, before it became effective, the house had been turned into a shop and would, therefore, otherwise be the subject of Pt. II of the Act. The appeal failed.

SINGLETON, L.J., agreed.

ROMER, L.J., said that unless Parliament had intended that the regulations which could be made and brought into operation before the commencement of the Act were to have immediate obligatory force and effect, it was very difficult to see what the object of providing for the regulations was, because if it was merely to show the landlord beforehand what the form of notice would be after the Act came into operation, the regulations could have been made under s. 37 of the Interpretation Act, 1889. Appeal dismissed.

APPEARANCES: *Roy Wilson*, Q.C., and *M. Waters* (*E. Kleinman*); *Charles Lawson* (*Tringhams*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 248**

CHANCERY DIVISION

ADMINISTRATION OF ESTATES: PERSONAL CHATTELS: RACEHORSES

***In re* Hutchinson, deceased; Holt *v.* Hutchinson and Others**

Danckwerts, J. 25th February, 1955

Adjourned summons.

W. V. H., who died intestate, owned at the date of his death twelve race-horses which were in training and used purely for recreational purposes. In addition to that activity, the deceased owned a stud farm which was run as a distinct and separate business by the deceased. The plaintiff, one of the administrators, took out this summons to determine whether the twelve race-horses owned by the deceased at the date of his death, and kept in training for racing purposes, passed to his widow absolutely as "personal chattels" within the meaning of s. 55 (1) (x) of the Administration of Estates Act, 1925. By s. 46 of the Administration of Estates Act, 1925, the widow of an intestate takes his personal chattels absolutely; "personal chattels" are defined in s. 55 (1) (x) of the Act to include "carriages, horses, stable furniture and effects (not used for business purposes) . . ."

DANCKWERTS, J., said that the racing activities of the deceased were not connected in any way with the stud farm business. The horses on the stud farm were business assets of the deceased and were so treated; his race-horses were in an entirely different category. He had been referred to *In re Whitby* [1944] Ch. 210; *In re Hall* [1912] W.N. 175; *In re White* [1916] 1 Ch. 172; and *In re Ogilby* [1942] Ch. 288, but those cases did not give him much assistance, and he had to consider the words of the definition in subs. (1) (x) of s. 55. It had been argued that, the word "horses" being used in the subsection in conjunction with the words "carriages" and "stable furniture and effects," it had to be confined to horses used for the domestic purposes of the premises on which the deceased resided. On the whole, he saw no reason to restrict the perfectly plain meaning of the words, and he did not see why horses kept by the deceased purely for the purpose of recreation should not be included in the term "personal chattels" as defined in s. 55 (1) (x). He would hold accordingly that they passed to the widow under s. 46 of the Act. Declaration accordingly.

APPEARANCES: *G. F. Dearbergh* (*Birkbeck, Julius, Coburn and Broad*); *T. A. C. Burgess* (*Wm. Easton and Sons*); *Maurice Berkeley* (*Wm. Easton & Sons*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 586**

QUEEN'S BENCH DIVISION

TRADE MARK: WRONG ENTRY IN TRADE DIRECTORY AS TO REGISTERED PROPRIETOR: "USE"

M. Ravok (Weatherwear), Ltd. *v.* National Trade Press, Ltd.

Lord Goddard, C.J. 23rd February, 1955

Preliminary point of law.

The Trade Marks Act, 1938, provides by s. 68 (2): ". . . references . . . to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods." By s. 4 (1) ". . . the registration . . . of a person in Part A of the register as proprietor of a trade mark . . . in respect of any goods shall . . . give . . . to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who . . . uses [the mark] in the course of trade, in relation to any goods in respect of which it is registered . . ." The defendants, who were publishers of a trade marks directory, erroneously listed in the directory *A* Ltd. as the registered proprietors of a trade mark registered in respect of waterproof and other clothing, whereas in fact the plaintiffs were the registered proprietors of the mark. On the plaintiffs bringing an action for an injunction to restrain the defendants from infringing their trade mark and for damages, the question whether the wrong listing of *A* Ltd. as the proprietors constituted an infringement of trade mark was ordered to be tried as a preliminary point.

LORD GODDARD, C.J., said that if *A* Ltd. had themselves inserted or authorised the wrong entry as an advertisement they would have been infringers. The governing words were "in the course of trade," which meant in the course of trade in the goods in question (*Aristoc, Ltd.* v. *Rysta, Ltd.* [1945] A.C. 68). The

fact that a person had improperly stated in a directory that *AB* was the proprietor of a trade mark was not a "use" of the mark by such person, though if he had been authorised by *AB* it would have been a "use" by *AB*. The defendants were not applying the mark to the goods, nor dealing with the goods, nor "using" the mark "in the course of trade" and "in relation to those goods." They were using it in the course of their own trade as publishers. Whatever remedy the plaintiffs might have against the defendants, they could not establish infringement of trade mark. Judgment for the defendants.

APPEARANCES: *M. Waters* (*Davies, Arnold & Cooper*); *Neville Faulks* (*Oswald Hickson, Collier & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 583**

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: MAINTENANCE: PARTIES RESIDENT IN SAME HOUSE

Caras *v.* Caras

Davies, J. 17th January, 1955

Originating summons.

After a dispute between the parties in November, 1952, a husband and wife continued to live in the same house but slept apart and never resumed a normal relationship. In September, 1953, the husband reduced the wife's housekeeping allowance from £11 to £7 a week, and in October, 1953, removed the wife from her position as joint director with him in a company from which the husband received £2,000 a year and the wife £500 a year as directors. The parties were still living under the same roof when the wife issued a summons under s. 23 of the Matrimonial Causes Act, 1950, on the ground of wilful neglect to provide reasonable maintenance, and were still residing there at the date of the hearing.

DAVIES, J., after consideration of the facts and financial circumstances, made an order for periodical payments by the husband to the wife of £11 a week, less tax, upon the basis that the wife was going to continue to live in the house, and that the husband was going to continue to discharge all the outgoings, saying that if the wife were turned out of the house, or if the husband did not pay the bills, then she would have to take such further steps as were available to her.

APPEARANCES: *P. H. M. Oppenheimer* (*Headley, Dalzell and Dickinson*); *M. P. Picard* (*Amphlett & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 254**

SHIPPING: COLLISION: SALVAGE: FORFEITURE OF AWARD

The *Rene* (Owners) *v.* The *Alenquer* (Owners). The *Alenquer*.

The *Alenquer* (Owners, Master and Crew) *v.* The *Rene*, her Cargo and Freight (Owners).

The *Rene*.

Willmer, J. 3rd February, 1955

Actions.

The *Rene* with engines broken down was in imminent danger of drifting on to the Farilhoes Rocks, off the coast of Portugal. Distress signals were sent up from the *Rene*, and the *Alenquer*, in answer to these signals and to an S.O.S. flashed to her, deviated from her voyage to assist the *Rene*. On the vessels nearing each other, the master of the *Rene* requested to be taken in tow. The *Alenquer* collided with the *Rene* during an attempt at close quarters to establish a towing connection by heaving line, and the *Rene* suffered extensive damage. Thereafter at the request of the master of the *Rene*, the *Alenquer* stood by until the *Rene* had drifted out of all immediate danger. The *Rene* was eventually towed safely to Lisbon by a tug. The owners, master and crew of the *Alenquer* claimed a salvage award from the owners of the *Rene*, her cargo and freight. The owners of the *Rene* in a separate action against the owners of the *Alenquer* claimed damages occasioned to the *Rene* by a collision with the *Alenquer* during the salvage services. The owners of the *Alenquer* counter-claimed for the damage occasioned to their vessel by reason of the collision. Both actions were tried together by order of the court.

WILLMER, J., found the following facts: that the *Alenquer* had come to the *Rene* on the basis that such services as were possible would be rendered, and that later at request the *Alenquer* had stood by the *Rene*; that the services rendered had conferred no actual benefit on the *Rene*; that the collision was occasioned by the action of the *Alenquer* adopting an unseamanlike manoeuvre when attempting to make fast to the *Rene* and coming astern while in close proximity to the *Rene*. The learned judge said that the *Alenquer* had come to the *Rene* on a salvage basis, and having done what she was requested to do, she was entitled to an award. Regard must be had to the general principles of policy in relation to salvage which had been laid down over the years, which required that the court in judging the conduct of salvors should err, if anything, on the side of leniency towards salvors in so far as their behaviour was criticised. He had no desire to say anything to discourage salvors from taking fair risks and showing their customary enterprise in rendering salvage services, but in all the circumstances he had come to the conclusion that the wrong-doing of the *Alenquer* in this case exceeded that which was permissible even to a salvor, and that in the circumstances the *Alenquer* had no defence to this damage claim brought against her by the owners of the *Rene*. Bearing in mind that the service rendered by the *Alenquer* to the *Rene* was a very trifling service, which could in any case only merit a very slight award, and that the damage occasioned by the collision was very substantial and must far exceed any sum which could possibly be awarded by way of salvage to the *Alenquer*, counsel had accepted that, on the facts of this case, if the *Alenquer* was to be found to blame for the collision, he could not justify claiming any award of salvage. Where the service was a substantial one, such as would be likely to warrant a very substantial award, the fact that in the course of rendering such a service a salvor was to blame for a relatively trivial collision, causing only minor damage, would not be a sufficient reason for depriving him altogether of any award. But, bearing in mind the sort of figures in this case, the fact of the *Alenquer* being seriously to blame in respect of this very substantial collision made it quite impossible to make any award of salvage in her favour. Claim in the collision action allowed—counter-claim dismissed. Claim in the salvage action dismissed.

APPEARANCES: *J. B. Hewson* and *R. F. Stone* (*Ingledew, Brown, Bennison & Garrett*); *J. Roland Adams*, Q.C. and *P. T. Bucknill* (*Thomas Cooper & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 263**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Fisheries Bill [H.C.] [1st March.
Northern Ireland Bill [H.C.] [1st March.
Trustee Savings Banks (Pensions) Bill [H.C.] [28th February.

Read Second Time:—

Chatham Intra Charity of Richard Watts and Other Charities Bill [H.C.] [3rd March.

Read Third Time:—

Cocos Islands Bill [H.C.] [2nd March.
Colonial Development and Welfare Bill [H.C.] [3rd March.
University of Hull Bill [H.L.] [1st March.

In Committee:—

Road Traffic Bill [H.L.] [1st March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Hotel Proprietors (Liabilities and Rights) Bill [H.C.] [3rd March.

To amend the law relating to inns and innkeepers.

Read Second Time :—

Birmingham Corporation Bill [H.C.] [3rd March.
Public Works Loans Bill [H.C.] [28th February.

Read Third Time :—

Imperial War Museum Bill [H.C.] [4th March.

B. Questions

Legal Aid (Contribution)

The Attorney-General refused to modify the regulations regarding contributions to be paid by assisted persons or to give the National Assistance Board greater discretion in the matter. The Lord Chancellor agreed with the view expressed by the Legal Aid Advisory Committee in their Third Annual Report that public money should go first towards extending the scheme to those parts of the Act not yet in force, rather than to amending the parts already in operation. [28th February.

Court Proceedings (Public Admission)

The Attorney-General said that he had no evidence suggesting that any amendment of the law was desirable in order to secure that criminal charges were always heard in public court except when the court, on application being publicly made to it, otherwise ordered, and he did not consider that any useful purpose would be served by appointing a committee to study the question. [28th February.

Sonic Bangs (Compensation)

Mr. Selwyn Lloyd refused to introduce legislation to regulate the method of obtaining compensation for damage caused by supersonic bangs, as compensation was already being paid for damage caused by sonic bangs on the same basis as if the Crown were legally liable. [28th February.

Income Tax (P.A.Y.E. Coding)

Mr. R. A. Butler said that the term " double reduced rate restriction " used by the Inland Revenue on income tax coding forms denoted an adjustment of P.A.Y.E. coding where an individual had more than one source of income falling within P.A.Y.E. It was intended to correct the excessive allowance of reduced rate relief which would otherwise be given by the tax tables in such cases. [1st March.

Town and Country Planning (Pt. I Claims)

Mr. Duncan Sandys said he was not yet satisfied that a general extension of the time limit for applications under Pt. I of the Town and Country Planning Act, 1954, was necessary. It was important that these outstanding debts should be settled as soon as possible. [1st March.

Footpaths Survey

Asked what action was being taken to increase the rate of progress in making footpath agreements or orders on long-distance routes, Mr. Duncan Sandys stated that the National Parks Commission proposed to carry the preliminary survey of future routes to a further stage than had hitherto been possible, which might help to relieve local authorities who found negotiation of numerous agreements with the owners of the land unduly burdensome. Although the making of orders might be quicker, it was preferable to proceed by agreement wherever possible. [1st March.

Murders (Statistics)

Major Lloyd George made the following statement :—" The number of murders known to the police in England and Wales in 1953, excluding cases ultimately dealt with as manslaughter or infanticide, was 141. In 53 of those cases, the suspected murderer died before trial, 51 of them by suicide. In 36 cases the supposed murderer was either found insane on arraignment and unfit to plead, or guilty but insane. Two persons were handed over to the United States authorities for trial ; in respect of one person, the Attorney-General entered a *nolle prosequi ;* and seven persons were acquitted. The number of persons convicted and sentenced to death was 28. Of these, one had his conviction quashed on appeal ; one was subsequently certified insane ; 10 were reprieved and had their sentences commuted to imprisonment for life, and 16 were executed. Similar information for 1954 is not yet available." [2nd March.

Road Accidents (Medical Evidence)

Major Lloyd-George said that where criminal proceedings were taken following a road accident, it was open to either the prosecution or the defence to call any relevant medical evidence, and he was not aware that the courts required any special powers in addition to those which they already possessed to obtain a report on the physical and mental condition of the defendant after conviction, to assist them in determining the appropriate penalty. [3rd March.

Magistrates (Rights and Duties)

Major Lloyd-George said he had no reason to believe that justices of the peace were not aware of the relevant statutory provisions in respect of sittings in open court and the hearing of evidence *in camerâ*. The effect of these provisions was that justices were normally required to sit in open court when trying criminal charges against adults. They were expressly relieved from this obligation when they were sitting as examining justices but, so far as he knew, they sat in private only in exceptional circumstances. He was not aware of any provision which compelled the disclosure of particulars of the accused, the charge, and the justices' decision, but he had no reason to think that on the rare occasions when examining justices might think it necessary to sit in private they would in general refuse to disclose this information. [3rd March.

Juries (Verdicts)

Major Lloyd-George refused to introduce legislation to enable juries in England and Wales to return the Scottish verdict of " Not Proven " in appropriate cases. [3rd March.

STATUTORY INSTRUMENTS

Central Land Board (Provision of Information) (Scotland) Regulations, 1955. (S.I. 1955 No. 298 (S.29).) 6d.

County of Devon (Electoral Divisions) Order, 1955. (S.I. 1955 No. 309.) 5d.

County of Lincoln, Parts of Kesteven (Electoral Divisions) Order, 1955. (S.I. 1955 No. 310.) 5d.

Defence Regulations (No. 1) Order, 1955. (S.I. 1955 No. 295.)

Hire-Purchase and Credit Sale Agreements (Control) Order, 1955. (S.I. 1955 No. 297.) 6d.
As to this order, see p. 155, *ante*.

Housing (Forms) (Scotland) Amendment Regulations, 1955. (S.I. 1955 No. 288 (S.28).) 8d.

International Organisations (Immunities and Privileges of the International Telecommunication Union) Order, 1954. (S.I. 1954 No. 1467.) 5d.

International Organisations (Immunities and Privileges of the Universal Postal Union) Order, 1954. (S.I. 1954 No. 1466.) 5d.

International Organisations (Immunities and Privileges of the World Meteorological Organisation) Order, 1954. (S.I. 1954 No. 1469.) 5d.

London Traffic (Parking Places) Consolidation (Amendment) Regulations, 1955. (S.I. 1955 No. 304.) 5d.

Milk and Meals (Amending) Regulations No. 2, 1955. (S.I. 1955 No. 320.)

National Health Service (Dunoon Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 299 (S.30).) 6d.

North of St. Helens-Southport Trunk Road (Scarisbrick By-Pass) Order, 1955. (S.I. 1955 No. 263.) 8d.

Overseas Food Corporation (Date of Transfer) Order, 1955. (S.I. 1955 No. 311.)

Draft **Police Pensions** Regulations, 1955. 1s. 11d.

Draft Police Pensions (No. 2) Regulations, 1955. 6d.

Draft **Post Office Savings Bank** Amendment (No. 4) Regulations, 1955. 5d.

Prohibition of Landing Swine from the Channel Islands (Revocation) Order, 1955. (S.I. 1955 No. 289.)

Retention of Pipes under Highway (Devonshire) (No. 1) Order, 1955. (S.I. 1955 No. 294.)

Staffordshire Potteries Water Board (Stone) Order, 1955. (S.I. 1955 No. 290.) 5d.

Stockport Extension (Amendment) Order, 1955. (S.I. 1955 No. 293.)
Stopping up of Highways (London) (No. 9) Order, 1955. (S.I. 1955 No. 296.)
Treasury (Loans to Local Authorities) (Interest) Minute, 1955. (S.I. 1955 No. 321.)
Treasury (Loans to Persons other than Local Authorities) (Interest) Minute, 1955. (S.I. 1955 No. 322.)
Tuberculosis (Argyll and Hebrides Eradication Area) Order, 1955. (S.I. 1955 No. 284.)
Tuberculosis (Forth Eradication Area) Order, 1955. (S.I. 1955 No. 286.)
Tuberculosis (Mid-Wales Eradication Area) Order, 1955. (S.I. 1955 No. 287.)
Tuberculosis (North-West England Eradication Area) Order, 1955. (S.I. 1955 No. 285.)
Wages Regulation (Licensed Non-Residential Establishment) (Managers and Club Stewards) (Amendment) Order, 1955. (S.I. 1955 No. 306.) 5d.
Wireless Telegraphy (Control of Interference from Electric Motors) Regulations, 1955. (S.I. 1955 No. 291.) 8d.
Wireless Telegraphy (Control of Interference from Refrigerators) Regulations, 1955. (S.I. 1955 No. 292.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Slaughterhouse Licences—Right of Appeal

Q. Having regard to the words, " If and so far as it appears to them that additional slaughterhouse facilities are required in their district having regard to the reasonable requirements of persons making use of such facilities," and the requirements of s. 3 (2) requiring the consent of the Ministry of Food of the Slaughterhouses Act, 1954, does an appeal still lie under s. 57 (6) of the Food and Drugs Act, 1938, against the refusal of a local authority to grant a licence in respect of a new private slaughterhouse ?

A. In *Murugiah* v. *Jainudeen* [1954] 3 W.L.R. 682; 98 Sol. J. 784 (P.C.), the following passage from Maxwell's " Interpretation of Statutes " was approved as a correct statement of the law (at p. 687) : " *Presumption against Implicit Alteration of Law :* One of these presumptions is that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights or depart from the general system of law, without expressing its intention with irresistible clearness." We find no " irresistibly clear " indication in the Slaughterhouses Act, 1954, that the right of appeal given by the Food and Drugs Act, 1938, s. 57 (6), is taken away. By s. 3 of the 1954 Act, it is plain that licences are still granted under s. 57, and that s. 3 merely amends and extends that section. The requirement of the Minister's consent under s. 3 (2) is merely something additional to the local authority's consent, for, even if the magistrates decide that a refusal of a licence is unjustified under s. 57 (6), it is still the authority that grants the licence (Food and Drugs Act, 1938, s. 89). In our opinion, moreover, the Act of 1954 rather suggests that the right of appeal under s. 57 continues, for (*a*) the right of appeal is expressly mentioned in s. 3 (3); (*b*) by s. 6 (4), Pt. V of the 1938 Act (which includes s. 57) is construed as if Pt. I of the 1954 Act were contained in it; and (*c*) the various amendments made by the 1954 Act to s. 57 show that the draftsman considered it to be in full force and effect.

Root of Title—Conveyance by Crown—Defence Act, 1842, s. 14

Q. A client of mine is purchasing property from a Government department. When supplying root of title they have referred me to s. 14 of the Defence Act, 1842, and have stated that they will not supply a root of title other than a conveyance to them. They point out that by virtue of the section the conveyance to my client will be sufficient, and they have refused the earlier abstract. Is this the usual practice ? Can a purchaser from my client be made to accept a root of title commencing with a conveyance to my client and by s. 14 of the Defence Act be debarred from asking for a full thirty-year root of title ? Would such purchaser be fully protected ?

A. We believe that the practice mentioned is usually adopted by Government departments who purchased under the Defence Acts. For a list of authorities enabled to purchase under these Acts, see Halsbury's Statutes, 2nd ed., vol. 22, p. 871. We know of no authority on the matter, but we believe it is generally accepted that a sale by a Government department does over-reach other adverse interests by virtue of the Defence Act, 1842, s. 14. Therefore, we think it follows that a subsequent purchaser must accept the conveyance by the Crown as a root of title. (It might be advisable to provide for this expressly in any contract of sale.) We think the words of s. 14 are wide enough to protect a purchaser. In any case, under an open contract he would not seem to have any option but to accept the title.

Improvement Grants and Mortgagees

Q. I am acting for *A*, the purchaser of a dwelling-house, and *B*, his proposed mortgagee. *A* wishes after completion of his purchase to carry out improvements to the property and to obtain a grant from the local authority under the Housing Act, 1949. I have advised *A* and *B* that if such a grant is obtained, the operation of s. 23 (1) (*b*) of the said Act would prevent *A* from selling the property with vacant possession during the period of twenty years from the grant and also *B* from enforcing his mortgage security by sale with vacant possession during the same period. It appears to me that the power to repay the improvement grant contained in s. 24 of the Act is entirely dependent upon the agreement of the local authority, and that if the latter for any reason were disposed to withhold the consent they could obtain an injunction under s. 23 (4) to prevent the sale. For this reason I am inclined to advise both parties that no application for an improvement grant should be made under this Act. (1) Is the local authority entitled to withhold its consent under s. 24 in its absolute uncontrolled discretion and to prevent a sale by either party in the manner indicated above ? (2) In the event of a secret sale without the consent or knowledge of the local authority, would the latter have any power to do anything other than to demand payment of the sum specified in s. 23 (2) or could they, in addition to such remedy, take any action prejudicial to the purchaser, e.g., by insisting that he let the property ? (3) Should *B* be advised to forbid *A* to make any such application, and in this event could any enforceable provision be inserted in the mortgage deed to safeguard *B* against this eventuality ? (4) Would the making of such a grant negative any provision in the mortgage excluding *A's* right to grant leases or tenancies ?

A. (1) We consider that the local authority may withhold its consent in its absolute uncontrolled discretion and so prevent a sale except to a person who would let the house or keep it available for letting. (2) We consider that the local authority could restrain a breach of condition under the authority of s. 23 (4) (*a*); for instance, they could obtain an injunction to prevent occupation by a purchaser. (3) We think a covenant not to make an application for a grant without the mortgagee's consent could properly be inserted in the mortgage. The view

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

has been expressed that such a covenant might be void as being against public policy, but we do not think this is so. There are other ways of raising money for improvements, and we see no reason why a mortgagee should not protect himself in this way.

(4) We do not think the making of the grant would negative such a provision. The statutory conditions do not prevent occupation in accordance with the restrictions in the mortgage, i.e., by the mortgagor, his family or successors.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

"Services" in the Housing Repairs and Rents Act

Sir,—I was interested to read the article under the Landlord and Tenant Notebook entitled "Meaning of Services in the Housing Repairs and Rents Act, 1954," which appeared in your issue of the 5th February, and I suggest that the view put forward by the author, "R. B.," in the final paragraph of his article is clearly borne out by the judgment of Lord Greene, M.R., as reported in *Engvall* v. *Ideal Flats, Ltd.* [1945] K.B. 205.

G. T. LLOYD,
London, W.C.1 *Deputy Town Clerk, Borough of Holborn.*

R. B. writes: In so far as the protection of one's own interests and the promotion thereof go hand in hand, I agree. My suggestion was that part of the cost of providing some services, in so far as equipment was necessary in order that such services could function, ought to be reckoned as part of "the cost of the provision of" such services for the purposes of s. 40 of the Housing Repairs and Rents Act, 1954. Lord Greene, M.R., was concerned with the question whether a landlord's covenant to provide hot water and central heating was a "term or condition" carried over into a statutory tenancy, by virtue of s. 15 (1) of the Increase of Rent, etc., Restrictions Act, 1920. The learned Master of the Rolls supported a conclusion based on the "natural sense" of the words by pointing out that central heating was a practical attraction, flats being uninhabitable without it. But I would not like to suggest that these observations would in themselves support a contention as to the meaning of "services" in s. 40 of the 1954 Act.

NOTES AND NEWS

Honours and Appointments

Mr. P. J. MANTLE, C.M.G., deputy head of the Administration of Enemy Property Department, has been appointed Administrator of German Enemy Property and of Japanese Property.

Mr. ROY CHARLES LIDDELL, assistant solicitor to Maidenhead Corporation, has been appointed assistant solicitor to the County Borough of Blackpool. He will take up his new duties at the end of March.

Mr. BERNARD OLIVER LEATHES PRIOR, Clerk of the Peace for Norwich, has been appointed Norwich City Coroner from 1st March in succession to Mr. L. G. Hill, who has retired.

Personal Note

Lieut.-Commander John Oliver Augustus Arkell, solicitor, of Swindon, was married recently to Miss Audrey T. A. Gisburn, of Pinhoe, Devon.

Miscellaneous

PADDINGTON NORTH RENT TRIBUNAL

Paddington North Rent Tribunal is now operating from new offices, the address of which is: 5 Praed Street, Paddington. The telephone numbers will remain the same, Paddington 0403/4.

DEVELOPMENT PLANS

NORFOLK DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Norfolk. The plan, as approved, will be deposited in the County Offices, Norwich, for inspection by the public.

COUNTY COUNCIL OF DURHAM

COUNTY DEVELOPMENT PLAN—BISHOP AUCKLAND TOWN MAP

The above town map prepared as part of the above development plan was on 1st March, 1955, submitted to the Minister of Housing and Local Government for approval. The town map relates to land situate within the Urban District of Bishop Auckland. A certified copy of the town map as submitted for approval has been deposited for public inspection at the County Planning Office, 10 Church Street, Durham. A certified copy of the town map has also been deposited for public inspection at the Town Hall, Bishop Auckland. The copies of the town map so deposited are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the town map may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 19th April, 1955, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Durham County Council at the office of the Clerk of the Council, Shire Hall, Durham, and will then be entitled to receive notice of the eventual approval of the town map.

MERIONETH COUNTY DEVELOPMENT PLAN

On 3rd February, 1955, the Minister of Housing and Local Government approved (with modifications) the above development plan. Certified copies of the plan as approved by the Minister have been deposited at: The County Offices, Penarlag, Dolgelley. The U.D. Council Offices, Bala. The U.D. Council Offices, Barmouth. The U.D. Council Offices, Bridge Street, Dolgelley. The U.D. Council Offices, Blaenau Ffestiniog. The U.D. Council Offices, Towyn. The R.D. Council Offices, Victoria Buildings, Dolgelley. The R.D. Council Offices, Penrhyndeudraeth. The R.D. Council Offices, Corwen. The R.D. Council Offices, Bala. The R.D. Council Offices, Machynlleth. The copies of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays, and between the hours of 9 a.m. and 12 noon on Saturdays. The plan became operative as from 25th February, 1955, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any Regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 25th February, 1955, make application to the High Court.

Wills and Bequests

Mr. N. A. Foster, retired solicitor, of Bradford and Harrogate, left £69,223 (£68,575 net).

Sir Alfred W. Brown, LL.D., former legal adviser to the High Commissioner in Germany, left £11,712.

OBITUARY

MR. N. A. METCALFE

Mr. Nevile Arthur Metcalfe, solicitor, of Southwell, died recently, aged 67. He was admitted in 1911.

MR. C. A. RUST

Mr. Carteret Anderson Rust, solicitor, of Lincoln's Inn Fields, died on 20th February. He was admitted in 1902.

SOCIETIES

Mr. F. T. Craddock has been elected president of WALSALL LAW SOCIETY with Mr. A. V. Haden as chairman. The duties of secretary will be jointly carried out by Mr. J. W. Woodward and Mr. B. P. Francis.

The LAW STUDENTS DEBATING SOCIETY announce that on 15th March, 1955, at 7 p.m., at 60 Carey Street, W.C.2, there will be a joint debate with the Publicity Club of London on the motion "That this House steadfastly refuses to do its pools."

The UNION SOCIETY OF LONDON announce the following subjects for debate in March: Wednesday, 16th, Ladies' Night debate: "That law has contributed more to the good of mankind than science." To be held in the Niblett Hall, Inner Temple (by permission of the Masters of the Bench), at 8 p.m. Tickets (price 2s. 6d.) may be obtained from officers and members of the committee or at the door. Wednesday, 23rd, "That this House would use the revenue surplus for the current year to reduce income tax." Wednesday, 30th, "That the slavish adherence to convention is a bar to a good life." The next meeting will be held on 20th April. Meetings are held in the Common Room, Gray's Inn, at 8 p.m.

The annual dinner of the DERBY LAW STUDENTS' SOCIETY is to be held on 25th March, at the Clarendon Hotel, Derby. The Society is celebrating its golden jubilee this year, and at the dinner will be Judge Sir Henry Braund, the Derby County Court Judge, and the Society's president; Mr. Richard O'Sullivan, Q.C. (Recorder of Derby); Mr. Elliot Gorst, Q.C.; and Councillor Alec Ling (Mayor of Derby).

The annual dinner of the ROYAL INSTITUTION OF CHARTERED SURVEYORS was held at Grosvenor House, Park Lane, on Tuesday, 1st March, 1955. Mr. John A. F. Watson (past president) proposed the toast of "Our Guests," to which The Rt. Hon. The Viscount Kilmuir, G.C.V.O. (The Lord High Chancellor of Great Britain), and Sir John Maud, G.C.B., G.B.E. (Permanent Secretary, Ministry of Fuel and Power), replied. Among those present were: Councillor J. Gordon Elsworthy, The Rt. Worshipful the Mayor of the City of Westminster (Honorary Secretary); The Rt. Hon. The Earl of Radnor, K.C.V.O., Chairman, The Forestry Commission (Honorary Member); Brigadier Sir John Hunt, C.B.E., D.S.O. (Honorary Member); Mr. F. H. Jessop, President of The Law Society; Colonel W. R. Prescott, M.C., T.D., D.L., President of the Country Landowners' Association; Major N. E. Webster, O.B.E., M.C., President of the Institution of Mining Engineers; Mr. J. N. Vaughan Richard, T.D., President of the Land Agents' Society; Mr. E. C. Ingram, President of the Chartered Auctioneers' and Estate Agents' Institute; Mr. C. A. Knight, President of the Incorporated Society of Auctioneers and Landed Property Agents; Mr. Harvey G. Frost, O.B.E., President of the National Federation of Building Trades' Employers; Mr. G. T. Williams, Deputy-President of the National Farmers' Union; Mr. E. H. Doubleday, O.B.E., President of the Town Planning Institute; Mr. Harold Williams, O.B.E., President of the College of Estate Management (Member of Council); Mr. W. Trevor Davies, President of the Central Association of Agricultural Valuers; Professor R. Roelofs, President-Designate of the International Federation of Surveyors; Lieut.-General Sir Humfrey Gale, K.B.E., C.V.O., M.C.; Alderman L. G. H. Alldridge, C.B.E., J.P., Chairman of the Rating Committee, Association of Municipal Corporations; Sir Harold Emmerson, K.C.B., K.C.V.O., Permanent Secretary, Ministry of Works; Sir Thomas Sheepshanks, K.C.B., K.B.E., Permanent Secretary, Ministry of Housing and Local Government; Sir Alan Hitchman, K.C.B., Permanent Secretary, Ministry of Agriculture and Fisheries; and Sir Wyndham Hirst, K.B.E., the Public Trustee.

CASES REPORTED IN VOL. 99

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